

VIA FACSIMILE OCTOBER 7, 2002

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re application of: Choi et al.

Art Unit: 1645

Application Serial No.: 09/765,271

Examiner: Duffy, P.

Filed: January 22, 2001

Atty. Docket: PB340P2C3

For: *Streptococcus pneumoniae* Antigens and Vaccines**PROVISIONAL ELECTION WITH TRAVERSE UNDER 37 C.F.R. § 1.143**Commissioner for Patents
Washington, D.C. 20231

Sir:

In response to the Office Action mailed June 7, 2002 (Paper No. 4), please consider the following provisional election, traversal, and remarks. Applicants submit concurrently herewith: (a) a Fee Transmittal Sheet, accompanied by the appropriate fees; and (b) a Petition for an Extension of Time for three months, to and including October 7, 2002.

Pursuant to Paper No. 4, the Examiner has required an election under 35 U.S.C. § 121 of one of Groups I-VI. The Examiner contends that the inventions are distinct, each from the other. The Examiner has further required election of "a single polynucleotide encoding a single polypeptide" within provisionally-elected Group I. Paper No. 4, page 2.

In response, Applicants provisionally elect, *with traverse*, the subject matter of Group I, represented by claims 1-9 and 13, drawn to polynucleotides, vectors and host cells containing such polynucleotides, and methods of producing the polypeptides encoded by such polynucleotides for further prosecution. Applicants further provisionally elect, *with traverse*, polynucleotides encoding SEQ ID NO:56, including but not limited to SEQ ID NO:55.

With respect to the Examiner's division of the invention into six groups and the reasons stated therefor, Applicants respectfully traverse. Even assuming, *arguendo*, that Groups I-VI represented distinct or independent inventions, Applicants submit that to search and examine the subject matter of all the Groups together would not be a serious burden on the Examiner. Applicants point out that even where patentably distinct

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inventions appear in a single application, restriction remains improper unless the examiner can show that the search and examination of these groups would entail a "serious burden". See M.P.E.P. § 803. In the present situation, no such showing has been made. Although the Examiner has argued that Groups I through VI are separately classified, Applicants nonetheless submit that a search of the claims of Group I would also provide useful information for the claims of Groups II-VI. For example, in many if not most publications disclosing a polynucleotide, the authors also routinely include polypeptides encoded thereby, antibodies to such polypeptides, and methods for making and using the same. Since these searches commonly overlap, Applicants respectfully assert that the concurrent search and examination of Groups I to VI would not entail a serious burden.

Accordingly, in view of M.P.E.P. § 803, the claims of all Groups I-VI should be searched and examined in the present application. Applicants therefore respectfully request that the restriction requirement under 35 U.S.C. § 121 be reconsidered and withdrawn, and that the instant claims be examined in one application.

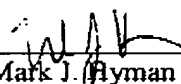
Applicants retain the right to petition from the restriction requirement under 37 C.F.R. § 1.144.

Conclusion

The Examiner is invited to call the undersigned at the phone number provided below if any further action by Applicants would expedite the examination of this application. If there are any fees due in connection with the filing of this paper, please charge the fees to our Deposit Account No. 08-3425. If a fee is required for an additional extension of time under 37 C.F.R. § 1.136, such an extension is requested and the fee should also be charged to our Deposit Account.

Respectfully submitted,

Dated: October 7, 2002


Mark J. Hyman (Reg. No. 46,789)

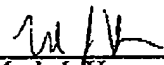
Human Genome Sciences, Inc.
9410 Key West Avenue
Rockville, MD 20850
(240) 314-1224

Enclosures

CERTIFICATE OF TRANSMISSION UNDER 37 C.F.R. § 1.8

1. Fax Cover Sheet
2. Fee Transmittal Sheet
3. Petition for Extension of Time (3 months, to and including October 7, 2002)
4. Provisional Election With Traverse Under 37 C.F.R. § 1.143

I hereby certify that the above-listed correspondence is being facsimile transmitted to the United States Patent and Trademark Office on October 7, 2002.


Mark J. Hyman (Reg. No. 46,789)

Human Genome Sciences, Inc.
9410 Key West Avenue
Rockville, MD 20850
Telephone: (240) 314-1224